



## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[Docket No. FWS-R4-ES-2021-0074; FXES11140400000-212-FF04EF4000]

### Renewal of Enhancement of Survival Permit and Modification of Safe Harbor

### Agreement for the Florida Scrub-Jay, Volusia County, FL; Categorical Exclusion

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; request for comment and information.

**SUMMARY:** We, the Fish and Wildlife Service (Service), have received a written request from Daytona State College (applicant) to renew the enhancement of the survival permit (permit) with minor amendments to an existing safe harbor agreement (SHA). Continued implementation of the SHA is intended to benefit the recovery of the federally listed threatened Florida scrub-jay in Volusia County, Florida. The Service is making the proposed permit renewal, which includes the applicant's proposed updated SHA (November 9, 2020), and our draft environmental action statement, available for public review and comment.

**DATES:** We must receive your written comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** *Obtaining Documents:* You may obtain copies of the documents online in Docket No. FWS-R4-ES-2021-0074 at <http://www.regulations.gov>.

*Submitting Comments:* If you wish to submit comments on any of the documents, you may do so in writing by any of the following methods:

- *Online:* <http://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS-R4-ES-2021-0074.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No.

**FOR FURTHER INFORMATION CONTACT:** Erin Gawera, by telephone at 904–731–3121 or via email at [erin\\_gawera@fws.gov](mailto:erin_gawera@fws.gov). Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

**SUPPLEMENTARY INFORMATION:** We, the Fish and Wildlife Service (Service), have received a written request from Daytona State College (applicant) to renew an existing enhancement of survival permit (permit) for an additional 10 years beyond its current expiration date. The Service and the applicant have mutually agreed to minor amendments to the Safe Harbor Agreement (SHA). The existing permit associated with the SHA was issued on November 15, 2010, under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and is in effect until November 15, 2030.

Renewing the permit associated with the SHA is intended to benefit the recovery of the federally listed threatened Florida scrub-jay (*Aphelocoma coerulescens*) on 76 enrolled acres (ac) of State-owned lands in Volusia County, Florida. The Service is making the proposed permit renewal, the modified SHA, and our draft environmental action statement (EAS) available for public review and comment. The draft EAS supports the Service’s preliminary determination that the proposed permit renewal associated with the modified SHA is eligible for a categorical exclusion under the National Environmental Policy Act (NEPA; 42 U.S.C. 4231 *et seq.*). To make this determination, we used our environmental action statement and low-effect screening form, which are also available for public review.

## **Background**

Section 9 of the ESA prohibits the take of fish and wildlife species listed as endangered or threatened under section 4 of the ESA. Under the ESA, the term “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to

attempt to engage in any such conduct (16 U.S.C. 1532(19)). The term “harm,” as defined in our regulations, includes significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). The term “harass” is defined in our regulations as an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3). Under specified circumstances, however, we may issue permits that authorize take of federally listed species, provided the take is incidental to, but not the purpose of, an otherwise lawful activity. Regulations governing permits for threatened species are at 50 CFR 17.32.

Under a safe harbor agreement, participating landowners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefiting species listed under the ESA. Safe harbor agreements, and the subsequent permits issued to participating landowners pursuant to section 10(a)(1)(A) of the ESA, encourage private and other non-Federal property owners to implement conservation actions for federally listed species by assuring the landowners that they will not be subjected to increased property use restrictions as a result of their efforts to either attract listed species to their property, or to increase the numbers or distribution of listed species already on their property. Enrolled landowners may make lawful use of the enrolled property during the permit term and may incidentally take the listed species named on the permit. Application requirements and issuance criteria for permits associated with safe harbor agreements are found in the Code of Federal Regulations (CFR) at 50 CFR 17.22(c) and 17.32(c). As provided for in the Service’s final Safe Harbor Policy (64 FR 32717; June 17, 1999), safe harbor agreements provide assurances that allow the property owner to alter or modify their enrolled property, even if such alteration or modification

results in the incidental take of a listed species, to such an extent that the property is returned back to the originally agreed upon baseline conditions. Private landowners may voluntarily terminate a safe harbor agreement at any time, in accordance with 50 CFR 13.26. If this occurs, landowners must relinquish the associated incidental take permit pursuant to section 10(a)(1)(A) of the ESA.

### **Safe Harbor Agreement**

The State lands covered under the existing SHA and valid permit consist of 76 ac on the Daytona State College campus in Volusia County, Florida. The baseline established in 2010 was 1.4 ac of occupied Florida scrub-jay habitat. Daytona State College has managed the property above baseline and has not proceeded with facility development since entering the SHA. Proposed minor changes within the SHA-enrolled property include a revision to the master campus facility development plan. The revision would not affect the 2010 established baseline of 1.4 ac of occupied Florida scrub-jay, nor would it affect the SHA management actions. Under the modified SHA, the applicant will continue to undertake the following habitat maintenance and enhancement actions intended to benefit the Florida scrub-jay on the enrolled property: (1) Remove sand pine canopy; (2) create open sandy areas through mechanical means (including chopping and/or root-raking) or by using herbicides; and (3) manage habitat using prescribed fire and/or mechanical means. Under comment and review is the request to renew the existing valid Permit associated with the SHA that was issued November 15, 2010, under ESA, and is in effect until November 15, 2030. The applicant is requesting to extend the Permit period for an additional 10 years beyond its current expiration date.

### **National Environmental Policy Act Compliance**

The renewal of the permit is a Federal action that triggers the need for compliance with NEPA. The Service has made a preliminary determination that the proposed permit renewal is eligible for categorical exclusion under NEPA, based on the following criteria: (1) Implementation of the SHA would result in minor or negligible adverse effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the SHA would result in minor or negligible adverse effects on other environmental values or resources; and (3) impacts of the SHA, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative adverse effects to environmental values or resources which would be considered significant. To make this determination, we used our EAS and low-effect screening form, which are also available for public review.

#### **Public Availability of Comments**

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment—including your personal identifying information—may be made available to the public. While you may request that we withhold your personal identifying information, we cannot guarantee that we will be able to do so.

#### **Authority**

The Service provides this notice under section 10(c) (16 U.S.C. 1539(c)) of the ESA and NEPA regulation 40 CFR 1506.6 and 43 CFR 46.305.

**Jay Herrington,**  
Field Supervisor,  
Jacksonville Field Office.